

**REMARKS**

Favorable reconsideration and allowance of this application are requested.

By way of the amendment instructions above, several of the pending claims have been revised so as to clarify the structural interrelationship of the various component parts of the claimed kit. In addition, the rejection raised against claim 15 under 35 USC §112, second paragraph has been rendered moot.

The paragraph in the specification at page 7, lines 1-16 has been revised so as to conform the same to the reference identifier MT employed in FIGURE 15. As such, the objection to the drawing is believed to have been mooted also.

The only issue remaining to be resolved is the Examiner's rejection of claims 13-17 under 35 USC §102(b) as allegedly anticipated by Asnis et al (USP 4,383,527). Applicant emphatically disagrees that Asnis renders the presently claimed invention unpatentable.

The Examiner's comments seem to indicate that phrases which functionally refer to future interrelationships and/or assembly of the claimed kit components have been ignored for purpose of patentability. Specifically, the Examiner asserts that:

"[It] has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the the [sic] claimed apparatus from a prior art apparatus satisfying the claimed structural limitations."<sup>1</sup>

Curiously, the Examiner cites no authority where it was so held.

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<sup>1</sup> Official Action dated November 3, 2003 at page 3, lines 4-7. See also, Official Action dated November 3, 2003 at page 3, lines 12-15.

Here, however, applicant is claiming a "kit" having interrelated component parts which may later be assembled. As such, the functional language employed in the claims are not merely recitations of intended use of such structure but represent definitive structural aspects thereof which cannot be ignored.

The Examiner's attention is directed in this regard to *In re Venezia*<sup>2</sup>. There, the Court held that there "...is nothing wrong in defining the structures of the components of the [kit] in terms of the interrelationship of the components, or the attributes they must possess, in the completed assembly.

Reviewing, the applied Asnis et al reference, it is clear that there is no disclosure or suggestion therein of a kit having component parts capable of assembly relative to an osteochondral allograft and a condylar defect site of a patient condyle to allow for transplanting of a portion of the osteochondral allograft to the condylar defect site. More specifically, Asnis et al fails to disclose or suggest that such a kit may comprise first and second pins adapted for insertion into the osteochondral allograft and the condylar defect site, respectively. And certainly, the "clamp" 1 of Asnis et al is not structurally capable of being adapted to clamp the osteochondral allograft with the second pin inserted therein to thereby positionally fix the osteochondral allograft and the second pin inserted therein such that the first pin inserted into said condylar defect site of the patient condyle is oriented in substantial parallel alignment with the second pin. This of course is precisely what applicant is claiming herein. As such Asnis et al must be removed as a reference against the present invention.

All issues outstanding in the official action dated November 3, 2003 having been addressed above, the early receipt of the Official Allowance Notice is solicited. Of course, should any small matter remain outstanding, the Examiner is encouraged to

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<sup>2</sup> 189 USPQ 149 (CCPA 1976).

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telephone the applicant's undersigned attorney so that the same may be resolved without the need for an additional written action and reply.

Such favorable action is therefore solicited.

Respectfully submitted,

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